

CAUTIOUS CREDITOR®

June 2000

EXPANDED SCOPE OF REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

This issue of the *Cautious Creditor*®, another in a series discussing Revised Article 9 of the Uniform Commercial Code, addresses changes in the classification of collateral covered under existing Article 9, and the expansion of Article 9 to cover several types of property and transactions previously excluded from Article 9. In revising Article 9, it was the drafters' intent to broaden the scope of Article 9 and to clarify how courts would interpret transactions previously governed by common law. Revised Article 9 will allow lenders to take a security interest in collateral not currently covered by Article 9. In evaluating any secured transaction, cautious creditors should determine how Revised Article 9 will be applied to the type of transaction or collateral at issue.

Accounts

Revised Article 9 expands the definition of accounts to include many forms of payments not covered by existing Article 9. Thus a secured lender will be able to perfect its security interest in certain payment rights, which existing Article 9 does not cover. Under existing Article 9, accounts are limited to rights of payment for goods sold or leased and for services rendered. Revised Article 9 defines accounts to include many payment rights previously treated as general intangibles under existing Article 9. Under Revised Article 9, accounts in which a lender can take a security interest also include royalty payments from licenses, patents, copyrights, trademarks and proprietary information; credit card receivables;

health care insurance receivables; and even payment rights pursuant to a land sale contract.

General Intangibles

Because many rights to payment which are treated under existing Article 9 as general intangibles will be treated as accounts under Revised Article 9, Revised Article 9 significantly narrows the definition of general intangibles. However some types of property will be treated as general intangibles for the first time. Under Revised Article 9, for example, payment rights that arise as a result of loan agreements and not evidenced by a promissory note constitute "general intangibles."

In addition, where software remains independent from other goods, the software is a general intangible under Revised Article 9. Software embedded in goods will be treated as part of the goods in which it is embedded under Revised Article 9, except where the goods consist solely of the medium in which the computer program is embedded. For example, disks containing computer programs will be general intangibles and not goods. However computer programs installed in a computer or an automobile are considered part of the computer or automobile and, therefore, will be classified as goods and not general intangibles.

Proceeds

Revised Article 9 also expands the definition of proceeds under existing Article 9.

Under existing Article 9, proceeds include whatever is realized from the sale, exchange, collection or disposition of collateral. Under Revised Article 9, the definition of proceeds is expanded to include rights arising as a result of the lease or license of collateral, claims for damages or defects in collateral, and distributions on stock. Thus when the collateral is damaged or defective, a lender will be perfected in the proceeds which result from the claimed defect or damages. In addition, a lender will have an interest in stock dividends and lease payments delivered to the debtor on account of the collateral.

Collateral previously excluded from Article 9

Revised Article 9 broadens the scope of Article 9 to include certain types of collateral omitted from existing Article 9. For example, health care insurance receivables which are treated as accounts under Revised Article 9 are excluded from existing Article 9. In addition, Revised Article 9 will apply to deposit accounts, commercial tort claims, consignments and letter of credit rights. Thus lenders can perfect a security interest in assets which the lender previously could not easily attach.

Comments

The provisions defining different types of collateral under Revised Article 9 will broaden the applicability of Article 9 and should facilitate a lender's ability to take security interests in a borrower's assets. With the reclassification of different types of collateral, however, the method of perfection of a security interest in items of collateral also will change. A future *Cautious Creditor*® will discuss perfection of security interests in these various types of collateral. Cautious creditors should take precautions to ensure that the proper steps are followed to perfect security interests in collateral under Revised Article 9 even before July 1, 2001, the effective date for Revised Article 9 in Indiana.

For more information in this area, please contact **Dominic F. Polizzotto** at (317) 236-2264, Internet: polizzot@icemiller.com.

Ice Miller Donadio & Ryan's Creditors' Rights and Commercial Law Practice Group provides practical advice and aggressive representation to financial institutions, small businesses and regional and national industry on commercial law and credit-related matters. Ice Miller Donadio & Ryan welcomes your questions and comments about the Cautious Creditor. Please direct them to Susan R. Brooke, Henry A. Efroymsen, Michael J. Lewinski, Dennis H. Long, Peggy J. Naile, Dominic F. Polizzotto, Thomas H. Ristine, Richard J. Thrapp, Zeff A. Weiss, or Michael A. Wukmer at (317) 236-2100.

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